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date of HUD's notice affirming or modifying the initial removal decision.

(3) *Automatic removal for issuance of final debarment, suspension, or limited denial of participation.* If you are a listed appraiser and you have been issued a final debarment, a suspension, or a limited denial of participation, the provisions of paragraph (a)(2) of this section do not apply to you, and you will be automatically removed from the Appraiser Roster.

(b) *Reinstatement.* If an appraiser who has been removed from the Roster wants to be reinstated on the Roster, the appraiser must follow the procedures and requirements contained in this subpart for placement on the Roster. Before an appraiser is eligible to reapply for placement on the Roster, the appraiser shall comply with the terms of any applicable remedial training education requirements, and the time period for the appraiser's removal from the Roster shall have expired.

(c) *Automatic suspension from Appraiser Roster—(1) Appraisers subject to state disciplinary action.* An appraiser whose state certification in any state has been revoked, suspended, or surrendered as a result of a state disciplinary action is automatically suspended from the Appraiser Roster and prohibited from conducting FHA appraisals in any state until HUD receives evidence demonstrating that the state-imposed sanction has been lifted.

(2) *Expirations not due to state disciplinary action.* An appraiser whose certification in a state has expired is automatically suspended from the Appraiser Roster in that state and may not conduct FHA appraisals in that state until HUD receives evidence that demonstrates renewal, but may continue to perform FHA appraisals in other states in which the appraiser is certified.

(d) *Education requirements.* Where there is evidence that an appraiser is deficient in FHA appraisal requirements, HUD may require an appraiser to undergo professional training.

(e) *Other action.* Nothing in this section prohibits HUD from taking any other action against an appraiser, as provided under 2 CFR part 2424, or from seeking any other remedy against an

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appraiser, available to HUD by statute or otherwise.

[65 FR 17977, Apr. 5, 2000, as amended at 68 FR 26950, May 16, 2003; 72 FR 73494, Dec. 27, 2007; 73 FR 1432, Jan. 8, 2008; 76 FR 72308, Nov. 23, 2011]

§ 200.206 What are my responsibilities as an appraiser listed on the Appraiser Roster?

All appraisers listed on the Appraiser Roster are responsible for:

(a) Obtaining and reading the HUD Appraiser Handbook (4150.2) and any updates to the Handbook;

(b) Complying with the HUD Appraiser Handbook (4150.2), and any updates to the Handbook, when performing all appraisals of properties for HUD single family mortgage insurance purposes; and

(c) Complying with all other instructions and standards issued by HUD when performing all appraisals of properties for HUD single family mortgage insurance purposes.

Subpart H—Participation and Compliance Requirements

SOURCE: 45 FR 54199, Aug. 14, 1980, unless otherwise noted.

PREVIOUS PARTICIPATION REVIEW AND CLEARANCE PROCEDURE

§ 200.210 Policy.

It is the Department's policy that participants in its housing programs be responsible individuals and organizations who will honor their legal, financial and contractual obligations. Accordingly, uniform standards are established in this part for approval, disapproval, or withholding of action on principals in projects based upon their past performance as well as other aspects of their records.

§ 200.213 Applicability of procedure.

The Previous Participation Review and Clearance procedure set forth in this part is administered by the Assistant Secretary for Housing-Federal Housing Commissioner and is applicable to all principals and to their:

(a) Projects already financed or which are proposed to be financed with a mortgage insured under the National

Housing Act and projects subject to a mortgage held by the Secretary under that Act or projects acquired by the Secretary under that Act (FHA projects);

(b) Projects financed or to be financed with direct loans or projects acquired by the Secretary pursuant to section 202 of the Housing Act of 1959 (Housing for the Elderly and Handicapped);

(c) Projects in which 20% or more of the units now receive or will receive a subsidy in the form of:

(1) Interest reduction payments under section 236 of the National Housing Act;

(2) Rent Supplement payments under section 101 of the Housing and Urban Development Act of 1965;

(3) Housing assistance payments under section 8 of the United States Housing Act of 1937 (with the exception of the programs described in 24 CFR part 882, subparts A, B, C and F, and in 24 CFR part 887, which are tenant-based programs);

(d) Sales of projects by the Secretary, including "all cash" sales.

[45 FR 54199, Aug. 14, 1980, as amended at 56 FR 50820, Oct. 9, 1991; 59 FR 31522, June 20, 1994]

§ 200.215 Definitions.

(a) *Affiliate*. Any person or business concern that directly or indirectly controls policy of a principal or has the power to do so is an affiliate. Persons and business concerns controlled by the same third party are also affiliates.

(b) *Felony*. A felony is any offense punishable by imprisonment for a term exceeding one year, but does not include any offense classified as a misdemeanor under the laws of a State and punishable by a term of imprisonment of two years or less.

(c) *Packager or Consultant*. A person or firm that furnishes or proposes to furnish advisory services in connection with the financing or construction of a project and the related HUD requirements. Such services may include, but are not limited to, the selection and negotiation of contracts with a general contractor, architect, attorney or management agent.

(d) *Participation Control Officer*. (See § 200.224)

(e) *Principal*. (1) An individual, joint venture, partnership, corporation, trust, nonprofit association, or any other public or private entity proposing to participate, or participating, in a project as sponsor, owner, prime contractor, Turnkey Developer, management agent, nursing home administrator or operator, packager, or consultant; and architects and attorneys who have any interest in the project other than an arms-length fee arrangement for professional services.

(2) The term principal also includes: (i) Any affiliates of a principal; (ii) if the principal is a partnership, all general partners, and each limited partner having a 25 percent or more interest in the partnership; (iii) if the principal is a public or private corporation or governmental entity; the President, Vice-President, Secretary and Treasurer and any other executive officers who are directly responsible to the Board of Directors, or the equivalent thereof; all the directors; and each stockholder having a 10 percent or more interest.

(3) Specifically excepted from this definition of a principal are: (i) Parties whose sole interest is that of purchaser or owner of less than five individual unit(s) in the same condominium or cooperative development; (ii) parties whose sole interest is that of a tenant; and (iii) Public Housing Agencies.

(f) *Project*. A project is: (1) Five or more residential units covered by a single mortgage, loan or contract of assistance; (2) a hospital, group practice facility or nursing home; (3) cooperative and condominium developments; and (4) a subdivision being developed and financed with a mortgage under title X of the National Housing Act.

(g) *Review Committee*. (See §§ 200.224 and 200.93).

(h) *Risk*. In order to determine whether a participant's participation in a project would constitute an unacceptable risk, the following factors must be considered: Financial stability; previous performance in accordance with HUD statutes, regulations, and program requirements; general business practices; or other factors which indicate to the MPRC that the principal could not be expected to operate the project in a manner consistent with furthering the Department's purpose of

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supporting and providing decent, safe and affordable housing for the public.

[45 FR 54199, Aug. 14, 1980, as amended at 56 FR 50820, Oct. 9, 1991]

§ 200.217 Filing of previous participation certificate on prescribed form.

(a) Effective October 11, 2005, or on such later date as may be allowed by HUD, all principals in HUD multi-family mortgage and project based subsidy programs must submit an electronic Previous Participation Certificate (form HUD-2530) via HUD's secure web server as a condition prerequisite to new or revised participation. Prior to this date, principals are required to file form HUD-2530 as a condition prerequisite to new or revised participation. Filing requirements are as prescribed by the Assistant Secretary for Housing-Federal Housing Commissioner at the occurrence of any of the events below:

(1) With an Application for a Site Appraisal/Market Analysis Letter, Feasibility Letter, Conditional Commitment for Mortgage Insurance, or Firm Commitment for Mortgage Insurance, whichever application is first filed, for projects to be financed or refinanced with mortgages insured under the National Housing Act;

(2) With an Application for a Fund Reservation for projects financed or to be financed with direct loans or capital advances under section 202 of the Housing Act of 1959 (Housing for the Elderly and Handicapped);

(3) With an Application for a Fund Reservation for projects financed or to be financed with direct loans or capital advances under Section 811 of the Cranston-Gonzales National Affordable Housing Act (Supportive Housing for Persons with Disabilities);

(4) With the first request for a reservation of funds for assistance payments for projects in which 20 percent or more of the units are to receive a subsidy described in § 200.213(c);

(5) With an Application for any Transfer of Physical Assets;

(6) With a request to assume any existing Housing Assistance Payments Contract, Interest Reduction Contract, Rent Supplement Contract, or Rental Assistance Payments Contract;

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(7) With a request to change ownership of a property regulated or controlled by a HUD "use agreement";

(8) With an application or request to change the approved lessee operating a nursing home, assisted living, or skilled care facility;

(9) With a bid to purchase a project being sold at foreclosure by HUD or by a foreclosure commissioner acting for HUD, when the terms of the sale permit HUD to disapprove a bidder;

(10) With a bid to purchase a Secretary-owned project;

(11) With a bid to purchase a mortgage note held by the Commissioner;

(12) At least 30 days prior to the date of any proposed substitution or addition of a new principal in an existing project, such as management agents, LLC members, directors, or partners, or proposed participation in a different capacity from that previously approved for the same project;

(13) At least 30 days prior to the proposed acquisition by an existing limited partner, stockholder, or any principal of additional interests resulting in a total interest of at least 25 percent (partners) or 10 percent (non-partners); or

(14) Certificates of participation must be submitted for interests acquired by any party or organization by inheritance or court decree within 30 days after said acquisition or decree, but will not be subject to review or disapproval.

(b) Certificates are not required for interests acquired by inheritance or by Court decree.

[45 FR 54199, Aug. 14, 1980, as amended at 59 FR 31522, June 20, 1994; 70 FR 19662, Apr. 13, 2005]

§ 200.218 Who must certify and sign.

All principals must certify and sign the certificate personally as to their individual record and are responsible for its timely filing with the HUD Area Office in whose jurisdiction the project or proposal is located except:

(a) When a corporation is a principal all its officers, directors and principal stockholders need not individually sign, certify nor file the certificate when they all have the same record. When their previous participation

records are the same the officer authorized to sign for the corporation will list on the certificate the full names for all such principals connected with the corporation who do not elect to sign. Those principals who have a separate participation record outside that of their corporation must certify, sign and file. The objective is full disclosure.

(b) The Participation Control Officer is authorized to waive the requirement for signatures for good cause in cases where he finds that adequate provision has been made for full disclosure, and the signature is thereafter provided.

§ 200.219 Content of certification.

(a) Each principal who executes the certificate certifies that:

(1) The certificate contains a listing of every assisted or insured project of HUD, Farmers Home Administration and State or local government housing finance agencies in which the principal has been or is now a principal;

(2) For a period beginning 10 years prior to the date of the certificate under review and except as shown on the certificate:

(i) No mortgage on a project listed has ever been in default nor has mortgage relief been given;

(ii) There have been no defaults or noncompliances under any conventional construction contract or Turn-key contract of sale in connection with a public housing project;

(iii) There are no known unresolved findings raised as a result of HUD audits, management reviews or other governmental investigations;

(iv) There has been no suspension or termination of payments under any HUD assistance contract attributable to the fault or negligence of principal;

(v) The principal has not been convicted of a felony (See definitions § 200.215(b)) and is not presently the subject of a complaint or indictment charging a felony;

(vi) The principal has not been suspended, debarred, or otherwise restricted by any Department or Agency of the Federal Government or of a State Government from doing business with such Department or Agency;

(vii) The principal has not defaulted on an obligation covered by a surety or

performance bond, and has not been the subject of a Claim under an employee fidelity bond;

(3) The principal has listed all parties who are known to him to be principals under § 200.215(e)(2);

(4) The principal is not a HUD employee or a member of an employee's immediate household as defined by HUD's Standards of Conduct in 24 CFR 0.735-205(c);

(5) Except as shown on the certificate under review, the principal is not a participant: (i) In a HUD assisted or insured project on which construction, as of the date of said certificate, has stopped for a period in excess of twenty days or; (ii) in an insured project on which construction, as of the date of said certificate, has been substantially completed for more than 90 days and documents for closing, including cost certification, have not been filed with HUD;

(b) The project owner shall certify that he has also listed all other parties who are principals under § 200.215(e)(1).

(c) If a principal cannot certify as to any items under paragraphs (a) and (b) of this section, such items may be deleted from the face of the certificate and a full explanation of the reason for the deletion, signed by the principal, may be attached to the certificate for HUD's review, evaluation and determination.

(d) Each principal who executes the certificate must also certify that said principal is not a Member of Congress or a Resident Commissioner.

§ 200.222 Certification of previous record on basis of a master list.

A principal may avoid repetitious listings by providing HUD with a complete master list, acceptable to the Participation Control Officer, of all projects in which the principal has participated. Where such a list has been provided, the principal may submit a certificate which refers to the master list and which supplements it by the addition of all information required under § 200.219 with respect to occurrences since the date of the master list (including subsequent occurrences with respect to the projects on the master list as well as subsequent projects). Partners, corporate officers, directors

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and stockholders may likewise refer to and thereby incorporate their firm's master list when they certify.

§ 200.224 Multifamily Participation Review Committee and Participation Control Officer.

The membership and authority of the Multifamily Participation Review Committee (hereinafter referred to as the Review Committee) are set forth in § 200.227. A majority of the members of the Review Committee shall constitute a quorum. The Executive Secretary of the Review Committee shall be the Participation Control Officer under this part and shall serve under the administrative supervision of the Director of the Participation and Compliance Division, who acts as Participation Control Officer in his absence.

[45 FR 54199, Aug. 14, 1980, as amended at 61 FR 7944, Feb. 29, 1996]

§ 200.225 Approvals by Area Managers for limited partners.

The Area Manager of the HUD Area Office where the certificate is filed is authorized to review the certificate and approve for participation limited partner principals: *Provided*, That they have no previous record of participation or their only participation in previous projects covered by these regulations has been as a limited partner. All other certificates must be forwarded to the Participation Control Officer.

§ 200.226 Determination by the Participation Control Officer.

(a) The Participation Control Officer is authorized to:

(1) Approve a principal when a review of the previous participation certificate and other available information reveals that there are no grounds to withhold approval or disapprove under the standards in § 200.229 or § 200.230, respectively;

(2) Disapprove a principal who; (i) is suspended or debarred or otherwise restricted under 2 CFR part 2424; or (ii) has been disapproved for participation no more than 12 months prior to the filing of the certificate under review, unless the principal has requested reconsideration of the disapproval;

(3) Refer all other cases to the Review Committee, together with all

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available information and documents and a recommendation of the action to be taken.

[45 FR 54199, Aug. 14, 1980, as amended at 72 FR 73494, Dec. 27, 2007]

§ 200.227 Multifamily Participation Review Committee.

(a) *Members.* (1) The Director, Office of Lender Activities and Land Sales Registration serves as Chairman and does not vote. The Committee is composed of the following voting members or their designees representing the Assistant Secretary for Housing- Federal Housing Commissioner: the Director of the Office of Insured Multifamily Housing Development; the Director of the Office of the Elderly and Assisted Housing; the Director of the Office of Multifamily Housing Management; the Director of the Office of Multifamily Preservation and Property Disposition; the Director of the Previous Participation and Compliance Division; and a designee of the Director of the Office of Lender Activities and Land Sales Registration.

(2) The Committee also includes, as non-voting members, the General Counsel or his or her designee, who provides legal counsel, and the Participation Control Officer in the Office of Lender Activities and Land Sales Registration. The Participation Control Officer is the Executive Secretary to the Committee and is empowered to issue and sign all notices, orders, letters and directives on behalf of the committee, to keep minutes, and to perform other duties assigned by the Chairman or directed by the Committee.

(b) *Functions.* The Committee will act for the Assistant Secretary for Housing-Federal Housing Commissioner and for the Assistant Secretary for Public and Indian Housing to determine the acceptability of participants in multifamily proposals under subpart H of this part.

[50 FR 37520, Sept. 16, 1985, as amended at 56 FR 41791, Aug. 23, 1991; 59 FR 31522, June 20, 1994. Redesignated at 61 FR 7943, Feb. 29, 1996]

§ 200.228 Determination by the Review Committee.

(a) The Review Committee shall make one of the following determinations in connection with every case referred to it by the Participation Control Officer:

(1) Approve the principal after consideration of the entire record in the light of the standards in § 200.230. All mitigating or extenuating factors will be considered. In each case, the decision shall be within the discretion of the Review Committee and rendered in the best interest of the Government and the public;

(2) Conditionally approve the principal's participation with such conditions or limitations which in the Review Committee's judgment are necessary to make the principal approvable;

(3) Withhold approval of the principal in accordance with § 200.229; or

(4) Disapprove the principal when approval is not justified and withholding approval is not appropriate.

(b) All determinations by the Review Committee shall be made by majority vote of those members present and entitled to vote.

§ 200.229 Withholding approval.

Approval of a principal may be withheld for:

(a) A period not to exceed 120 days when such action is deemed necessary to secure additional information upon which to base a final action including a determination as to whether a suspension or debarment action will be taken; or

(b) For a longer period pending the resolution of a criminal complaint or indictment.

§ 200.230 Standards for disapproval.

The standards for disapproval shall be as follows:

(a) Suspension, debarment or other restriction of the principal under 2 CFR part 2424;

(b) Suspension, debarment or other restriction of the principal by any other Department or Agency of the Federal Government from doing business with such Department or Agency;

(c) Unless the Review Committee finds mitigating or extenuating cir-

cumstances that enable it to make a risk determination for approval, any of the following occurrences attributable or legally imputable to a principal may be the basis for disapproval, whether or not the principal was actively involved in the project:

(1) Mortgage defaults, assignments or foreclosures, unless the Review Committee determines that the default, assignment or foreclosure was caused by circumstances beyond the principal's control;

(2) Defaults or noncompliance under any conventional construction contract or turnkey contract of sale in connection with a public housing project;

(3) Violation of the regulatory agreement or noncompliance with any other obligation to HUD that has not been corrected to the satisfaction of the Review Committee at the time of its consideration;

(4) Suspension or termination of payments under any HUD assistance contract;

(5) Defaults under an obligation covered by a surety or performance bond and/or claims under an employee fidelity bond;

(6) Unresolved findings as a result of HUD or other governmental audits or investigations; or

(7) A criminal record or other evidence that the principal's previous conduct or method of doing business has been such that his participation in the project would make it an unacceptable risk from the underwriting standpoint of an insurer, lender or governmental agency;

(d) With respect to any HUD insured or assisted projects, work stoppage for a period in excess of 20 days, or in the case of an insured project, failure to achieve final endorsement of the mortgage where the project has been substantially completed for more than 90 days but documents for closing, including cost certification have not been filed with HUD and such is chargeable to the fault or neglect of the principal;

(e) Any serious and significant violation by a management agent of a project management contract, where the contract required HUD or other Governmental agency approval at its inception;

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(f) Submission of a false or materially incomplete form 2530 certification application.

(g) Any other significant violation of or noncompliance with regulations, or programs or contract requirements of HUD, Farmers Home Administration or a State or local government's Housing Finance Agency in connection with any insured or assisted project.

[45 FR 54199, Aug. 14, 1980, as amended at 56 FR 50820, Oct. 9, 1991; 72 FR 73494, Dec. 27, 2007]

§ 200.233 Effect and requirement of approval.

Approval is required as a precondition for participation and constitutes clearance of the principal under this part for participation only for a specific project in a specific role. Approval of a principal does not obligate the Department to approve the principal's applications or contracts for program participation.

§ 200.236 Modification or withdrawal of certain approvals.

Approvals will not be modified or withdrawn, except in cases where the principal is subsequently suspended or debarred from further participation in any HUD programs under 2 CFR part 2424, or is found by the Review Committee to have obtained approval based upon submission to HUD of a false, fraudulent, or incomplete report or certificate. In such cases, the Review Committee may take such action, including modification or withdrawal of approval, as it determines to be in the best interest of the Department and the public. For the purpose of this section, the term "approval" includes conditional approval.

[72 FR 73494, Dec. 27, 2007]

§ 200.239 Notice of determination.

The Participation Control Officer shall give written notice to the principal and to the field office concerned of disapproval under § 200.226, and conditional approval, withholding of approval or disapproval by the Review Committee under § 200.228. In the case of any such adverse notice:

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(a) The notice shall contain a general statement of the reasons for the determination; and

(b) The notice to the principal shall be sent by certified mail to the address shown on the certificate with a return receipt requested.

§ 200.241 Request for reconsideration of an adverse determination and request for a hearing.

(a) Where approval has been withheld, denied, or conditionally granted, the principal may request reconsideration by the Review Committee. Such request shall be made in writing, within 30 days of receipt of the notice of such action, addressed to the Review Committee. It may contain such supporting material as principal desires; or

(b) The principal may file a request for a hearing before a Hearing Officer as provided in § 200.243. Such request for a hearing shall be made in writing within 30 days from the date of receipt of the determination.

§ 200.243 Hearing rules—How and when to apply.

(a) A principal who has been disapproved, conditionally approved, or who has had approval withheld by the Review Committee, either initially or after reconsideration, or who is disapproved by the Participation Control Officer, may request a hearing before a Hearing Officer. The hearing will be conducted in accordance with the provisions of 24 CFR part 26, subpart A, except as modified by this section. Requests for hearing must be made within 30 days from the date of receipt of notice of the adverse determination.

(1) Except as provided in paragraphs (a)(2) and (3) of this section, a principal may request an oral hearing before a hearing officer.

(2) Where a disapproval is based solely on a suspension or debarment that has been previously adjudicated, the hearing shall be limited to the opportunity to submit documentary evidence and written briefs for consideration by a hearing officer.

(3) Where a disapproval is based on a suspension and an appeal is pending, the hearing shall be stayed pending the outcome of the suspension, unless the

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parties and the hearing officer agree that the matter should be consolidated with the suspension for hearing.

(b) Hearings and review of determination by the Hearing Officer shall be governed by the procedures contained in 2 CFR part 2424, except as modified in paragraph (a) of this section and by § 200.245.

[45 FR 54199, Aug. 14, 1980, as amended at 56 FR 50820, Oct. 9, 1991; 61 FR 50219, Sept. 24, 1996; 72 FR 73494, Dec. 27, 2007]

§ 200.245 Hearing Officer determines facts and law: Review Committee makes final administrative decision.

The Hearing Officer will determine the facts and the law relevant to the issues and will report the determination in writing to the Review Committee and to the principal. The Review Committee shall be bound by the Hearing Officer's findings of facts and law and will make a final decision based upon its application of the uniform underwriting and risk evaluation standards contained in this part. It will notify principal of the final action taken.

Subpart I—Nondiscrimination and Fair Housing

§ 200.300 Nondiscrimination and fair housing policy.

Federal Housing Administration programs shall be administered in accordance with:

(a) The nondiscrimination and fair housing requirements set forth in 24 CFR part 5, including the prohibition on inquiries regarding sexual orientation or gender identity set forth in 24 CFR 5.105(a)(2); and

(b) The affirmative fair housing marketing requirements in 24 CFR part 200, subpart M and 24 CFR part 108.

[77 FR 5675, Feb. 3, 2012]

Subpart J—Equal Employment Opportunity

§ 200.400 Purpose.

The purpose of this subpart is to assist in achieving the aims of part III of Executive Order 11246 and the relevant regulations of the Secretary of Labor

and the Secretary of Housing and Urban Development.

§ 200.405 Notice to public.

Participants in insurance programs under the National Housing Act shall be informed, as early as possible upon indicating their interest in any such program, of the established policy of nondiscrimination in employment in construction, repair or rehabilitation work financed with assistance under the Act.

§ 200.410 Definition of term “applicant”.

(a) In any mortgage or loan insurance transaction under this chapter where the Commissioner will control the mortgagor either through the ownership of corporate stock or under the provisions of a regulatory agreement, the term *applicant* as used in § 200.415 shall mean the mortgagor.

(b) In any transaction other than one specified in paragraph (a) of this section, the term *applicant* as used in § 200.415 shall mean the developer, or the builder, dealer or contractor performing the construction, repair or rehabilitation work for the property owner.

§ 200.415 Agreement of applicant.

An applicant, prior to the Commissioner's issuance of any commitment or other loan approval, shall agree (in a form prescribed by the Commissioner) that there shall be no discrimination against anyone who is employed in carrying out work receiving assistance pursuant to this chapter, or against an applicant for such employment, because of race, color, religion, sex, handicap, age, or national origin.

[58 FR 41000, July 30, 1993]

§ 200.420 Equal opportunity clause to be included in contracts and subcontracts.

(a) The equal opportunity clause prescribed by the Commissioner pursuant to the regulations of the Secretary of Labor (41 CFR chapter 60) shall be included in each nonexempt contract and subcontract for work receiving FHA assistance.